

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2228 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAMPRASAD BHAKTIRAM SADHU

Versus

STATE OF GUJARAT

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Appearance:

MR KS JHAVERI for Petitioner

Ms. Katha Gajjar, AGP for Respondent No. 1

MR PV HATHI for Respondent No. 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/12/1999

ORAL JUDGEMENT

This is a petition under Article 226 of the  
Constitution of India for appropriate writ, order or

direction, directing the respondents to appoint the petitioner as a Clerk in the employment of the third respondent-Corporation w.e.f. the date on which he was selected by the Selection Committee which was held on 15.4.1986.

2. It seems that respondent No.3-Corporation held interviews for filling up the post of Clerks. It seems that the petitioner was one of the candidates and he was selected for the post of Clerk by the Selection Committee. It seems that the petitioner was one of the candidates and he was selected for the post of Clerk by the Selection Committee of the said Corporation. Thereafter, he was not appointed and, therefore, he has filed this petition in this Court requiring the respondents to appoint him as a Clerk by virtue of his selection as said above. It is also his contention that posts are vacant in the Corporation and, therefore, respondent No.3 can very well appoint him as a Clerk.

3. The respondents have filed affidavit, at different stages and the main defence is that the respondent No.3 has financial constraints and, therefore, it is not in a position to appoint the petitioner as a Clerk. It is also the case of the respondents that they have introduced a scheme for voluntary retirement and out of 340 employees of the third respondent, 330 employees have already opted for the premature retirement and out of that 202 have already been relieved by 30.9.1999 and 51 employees have been relieved on 30.11.1999. That therefore, it is not possible for the third respondent to appoint the petitioner in its employment.

4. I have heard Mr K S Jhaveri, learned Advocate for the petitioner and Mr P V Hathi, learned Advocate for the third respondent. Learned AGP, Ms. Katha Gajjar represented the State.

5. It has been vehemently contended by the learned Advocate for the petitioner that there are posts vacant in the employment of the third respondent, and therefore, the petitioner should have been appointed by the third respondent. There is no doubt that the posts are vacant. On the contrary, the affidavit at page 31 clearly shows that voluntary retirement scheme has been introduced and more than 250 employees have already retired and relieved through the said scheme, and therefore, vacancies are bound to be there. Therefore, there is no dispute about the same.

6. At the same time, merely because posts are

vacant, it is not obligatory on the part of the respondent to fill up those posts. It is more so when the third respondent has admitted that there is financial constraints and, therefore, it is not possible to employ more persons in the employment of the third respondent.

7. It has been contended by the learned Advocate for the petitioner that certain persons have been appointed by the third respondent. It is placed on record that a couple of persons have been appointed as Telephone Operators but they have not been appointed as Clerks. Therefore, these appointments will not be treated at par with the petitioner. Moreover, work of Operators is different from that of a Clerk. If clerical work is not there, the third respondent may not appoint Clerks, but there may be Telephone and telephonic services may be of need and therefore, Telephone Operators are required to be appointed by the third respondent. The petitioner was not selected for the post of Operator and hence his case would not be considered for the said appointment. Moreover, since the petitioner was only selected as a Clerk, he could not claim the post of Operator.

8. Another aspect of the case is that one appointment was released but that was on compassionate ground. That was also a different aspect and different criteria has to be adopted. When any employee dies during service, then his widow or children may be appointed in his post and this compassionate appointment which is usually there in Governmental bodies. This is also a different situation and the petitioner's case cannot be placed at par with them.

9. If we look to the facts on record, we find that General Manager of the Corporation has filed affidavit at page 13 and he has clarified that none from the select list has been appointed so far. Therefore, when the list has not been operated, in my view, the third respondent has not done any discrimination.

10. The petitioner has contended that the petitioner was assured that he would be given appointment but the said officer has very clearly stated in para 5 of his affidavit that the Corporation has never assured the petitioner to come again and to enquire about the matter. So no assurance was given to the petitioner by any one on behalf of the Corporation.

11. It has also been contended by the learned Advocate for the petitioner that he has not been appointed since he belongs to OBC category. Here also

the affidavit in para 5 makes it clear that it is not true that the petitioner is not appointed because he belongs to Baxi Panch community. Now if the petitioner was to be discriminated against on that ground, then he would not have been selected by the Selection Committee, but his selection shows that officers of the third respondent Corporation have not looked at the matter from that angle. The affidavit further shows in para 7 that the Corporation has not made any appointment from the candidates interviewed in April, 1986 and the Corporation does not intend to make any appointment directly as assumed by the petitioner.

12. The petitioner desires to contend that instead of appointing persons from the select list, the third respondent has been intending to make direct appointment but the above affidavit gives complete reply to that also. The affidavit further shows in para 9 that it is incorrect that the Corporation was going to appoint other persons directly by open interview and not through Employment Exchange.

13. It has been contended by the petitioner that since he has not been appointed, the Government has to pay an amount of Rs.50/- per month. Therefore, he should be appointed. If the petitioner is entitled to some amount as per the Government rules and regulations, he cannot compel the third respondent to make appointment with a view to get payment of Rs.50/- per month.

14. Even the affidavit at page 29 filed by Mr J B Patel makes it clear that no Clerk is appointed by way of direct recruitment or from the list prepared in April, 1986 in the office of the Corporation after April, 1986.

15. The petitioner also contended that the two female Telephone Operators are required to work on Clerical side. This is a matter between the said employees and the Corporation. If they are willing to work on clerical side as and when they are free, the petitioner cannot come out with any objection with respect to the intersay that the agreement between those two female operators and the Corporation. This case is very clear that when the list is not required to be operated and when the third respondent is not in need of any person on account of financial constraints, this Court, by exercising powers under Article 226 of the Constitution, cannot compel the third respondent to give appointment to the petitioner as Clerk. Under these circumstances, I am of the view that the petitioner is not entitled to any relief and hence the petition has to be dismissed as it is without any

merit.

16. Simply because a person has been selected and he stands in the select list, it is not open to the Court to ask the employer to positively make appointment of persons from the select list.

17. Learned Advocate for the petitioner has also contended that if the third respondent is not in need of Clerks, then the third respondent may appoint the petitioner and then the petitioner may opt for premature retirement. Even for premature retirement, particular minimum service is normally required and for the purpose of extending pensionary benefits, fresh appointments cannot be made. At least this Court cannot direct the third respondent to appoint the petitioner as Clerk so as to enable him to get pension under the scheme of voluntary retirement.

18. Under these circumstances, the petition is without any merits and hence there is no alternative but to dismiss the petition. However, since the petitioner is without employment of the third respondent, it may not be out of the way to leave the parties to bear their own costs in the application. Hence this petition is ordered to be dismissed. Rule is discharged. No order as to costs.

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msp.